

Exhibit H

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

COLONY COVE PROPERTIES, LLC,
a Delaware limited liability company,

Plaintiff,

v.

CITY OF CARSON, a municipal
corporation; CITY OF CARSON
MOBILEHOME PARK RENTAL
REVIEW BOARD, a public
administrative body; and DOES 1 to 10,
inclusive,

Defendants.

Case No. CV 14-03242 PSG (PJWx)

**PLAINTIFF'S REVISED
DISPUTED JURY INSTRUCTIONS
AND VERDICT FORM (CLEAN
SET)**

Judge: Hon. Philip S. Gutierrez
Courtroom: 880
Trial Date: April 28, 2016

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COURT'S INSTRUCTION NO. 2
Claims and Defenses

To help you follow the evidence, I will give you a brief summary of the positions of the parties:

Plaintiff Colony Cove Properties, LLC has one claim against Defendants City of Carson and City of Carson Mobilehome Park Rental Review Board. Plaintiff alleges that Defendants effected a taking of Plaintiff's property without just compensation in violation of the Fifth Amendment to the United States Constitution and 42 U.S.C. § 1983. Plaintiff claims that Defendants abruptly changed their rent-control rules and deviated from pre-existing practices immediately after Plaintiff purchased its mobilehome park. Plaintiff claims that it reasonably expected that it would be able to obtain rent increases sufficient to generate income to maintain and operate its mobilehome park, including the payment of interest on its mortgage from General Electric Capital Corporation. Plaintiffs claim that Defendants' change to the rules and practices forced Plaintiff to operate the mobilehome park at a multi-million-dollar loss for multiple years, and above all, interfered with what was a reasonable and distinct investment-backed expectation. Plaintiff has the burden of proving this claim.

Defendants deny this claim.

COURT'S INSTRUCTION NO. 3
Burden of Proof—Preponderance

When a party has the burden of proof on any claim by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

COURT'S INSTRUCTION NO. 14
Judicial Notice

The court has decided to accept as proved the fact of the historical performance of the S&P 500 stock market index from December 1, 2000, through December 1, 2014, attached hereto as Exhibit A, even though no evidence has been introduced on the subject. You must accept this fact as true.

COURT'S INSTRUCTION NO. 20

Adverse Inference

If a party fails to produce for deposition a person who has knowledge about facts in issue, and who is reasonably available to the party, and who is not equally available to the other party, after being properly served with a deposition notice, then you may infer that the testimony of that person is unfavorable to the party who could have produced the witness but did not.

Plaintiff properly served on Defendants a notice of deposition of Jim Dear, who was the City of Carson's Mayor at the time of the rent applications at issue in this case and who was the City Clerk for Carson when Plaintiff served its deposition notice. Defendants were under a duty to produce Mr. Dear for deposition because, at the time, Mr. Dear was an employee of the City. Defendants failed to produce Mr. Dear for deposition.

COURT'S INSTRUCTION NO. 21

Section 1983 Claim—Introductory Instruction

The plaintiff brings its claim under the federal statute, 42 U.S.C. § 1983, which provides that any person or persons who, under color of law, deprives another of any rights, privileges, or immunities secured by the Constitution or laws of the United States shall be liable to the injured party.

COURT'S INSTRUCTION NO. 22

Section 1983 Claim Against Local Governing Body Defendants Based on Official Policy—Elements and Burden of Proof

In order to prevail on its § 1983 claim against Defendants alleging liability based on an official policy, Plaintiff must prove each of the following elements by a preponderance of the evidence:

1. Defendants acted under color of law;
2. The acts of Defendants deprived Plaintiff of its particular rights under the United States Constitution; and
3. Defendants acted pursuant to an expressly adopted official policy.

A person acts “under color of law” when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance, or regulation. The parties have stipulated that Defendants acted under color of law.

“Official policy” means a rule or regulation promulgated, adopted, or ratified by Defendants City of Carson and City of Carson Mobilehome Park Rental Review Board. The parties have stipulated that Defendants acted pursuant to an expressly adopted official policy.

If you find that Plaintiff has proved each of these elements, and if you find that Plaintiff has proved all the elements it is required to prove under Court’s Instruction No. 23, your verdict should be for Plaintiff. If, on the other hand,

1 Plaintiff has failed to prove any one or more of these elements, your verdict should
2 be for Defendants.

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COURT'S INSTRUCTION NO. 23

***Penn Central* Regulatory Takings Claim Under 42 U.S.C. § 1983**

In general, the government must compensate the owner of private property when it requires a person or persons alone to bear public burdens which, in all fairness, should be borne by the public as a whole. Whether a particular governmental restriction on the use of property requires compensation by the government depends largely upon the particular circumstances of the case.

Under the Fifth Amendment, when the government takes a landowner's property, even if for a public purpose, the government is required to pay the landowner just compensation. To prove Defendants effected a taking without just compensation in violation of the Fifth Amendment, Plaintiff must establish by a preponderance of the evidence that justice and fairness require that the economic injuries caused by Defendants be compensated by the government, rather than remain concentrated on the Plaintiff.

In determining whether the government effected a taking in this case, consider and balance all the circumstances in the case, including:

1. the character and extent of economic impact of Defendants' action on Plaintiff at the time of the Defendants' action;
2. the extent and severity of the interference with Plaintiff's reasonable, investment-backed expectations;

1 3. the character of the governmental action, and specifically if it forces
2 some people alone to bear public burdens which, in all fairness and justice, should
3 be borne by the public as a whole;

4
5 4. the government interests served by Defendants' actions, and whether
6 the regulation is reasonably necessary to the effectuation of a substantial public
7 purpose;

8
9 5. the allocation of the burden among all taxpayers, i.e., whether a
10 landowner has been singled out; and

11
12 6. whether Defendants' actions were politically motivated.

13
14 You may consider the actual, investment-backed expectations of the Plaintiff
15 only to the extent they are "objectively reasonable" under all of the circumstances.
16 In other words, you must judge the reasonableness of the Plaintiff's expectations
17 from the perspective of a reasonable investor in the Plaintiff's position at the time
18 of the investment and not with the 20/20 vision of hindsight.

19
20 No single factor is controlling and Plaintiff does not need to establish each of
21 these factors to prevail. These are the relevant factors and circumstances that you
22 should consider when deciding if Plaintiff has established by a preponderance of
23 the evidence that a taking occurred.

COURT'S INSTRUCTION NO. 25
Prejudgment Interest

In a takings case, the defendants are obligated to pay prejudgment interest as part of the constitutionally required just compensation. Given the delay in time between the taking and the payment of compensation following trial, prejudgment interest is a measure that serves to compensate for the loss of use of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress.

To determine the appropriate rate of prejudgment interest when payment of just compensation is delayed, you must examine what a reasonably prudent person investing funds so as to produce a reasonable return while maintaining safety of principal would receive. You should apply an interest rate based on evidence of the rate that would be generated by investment in a diverse group of securities, including treasury bills.

VERDICT FORM

We, the jury empanelled in this case, answer the questions submitted to us as follows:

Regulatory Takings Claim

1. Did Defendants City of Carson's and City of Carson Mobilehome Park Rental Review Board's (collectively, "Defendants") decisions with respect to Plaintiff Colony Cove Properties, LLC's ("Plaintiff") rent-increase application submitted in September 2007 ("Year 1") and/or its rent-increase application submitted in September 2008 ("Year 2") constitute a regulatory taking without just compensation in violation of the Fifth Amendment to the United States Constitution?

Answer: YES _____ NO _____

If your answer to Question 1 is YES, then answer Questions 2 and 3. If your answer to Question 1 is NO, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. What amount of just compensation, before prejudgment interest, is due Plaintiff as a result of Defendants' actions?

Answer: \$_____

3. What prejudgment interest rate is Plaintiff entitled to?

Answer: _____%

1 **(INSTRUCTION: You are now at the end of the verdict form. Please verify**
2 **that you have answered all of the questions. If so, please have the presiding**
3 **juror sign and date the verdict form and advise the [marshal] [bailiff] that you**
4 **have reached a verdict.)**

5
6 DATED this _____ day of _____, 2016.

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9 Presiding Juror
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1 Dated: April 28, 2016

Respectfully submitted,

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3 GILCHRIST & RUTTER
Professional Corporation

4 &

5 O'MELVENY & MYERS LLP

6
7 By: /s/ Matthew W. Close
Matthew W. Close

8 Attorneys for Plaintiff
9 Colony Cove Properties, LLC

EXHIBIT A

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